



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P(MD)No.1040 of 2018

Sivanperumal

.. Petitioner

Vs.

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George,
Chennai - 9.
2. The District Collector and District Magistrate,
O/o.the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

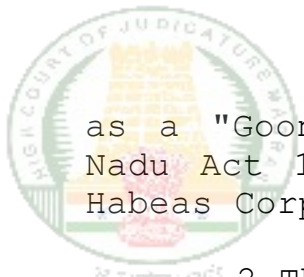
.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the Respondent No.2 in M.H.S.Confdl.No.59/2018 dated 26.06.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Sivanperumal son of Aathiyappan, aged about 26 years, now detained at Palayamkottai Central Prison before this Court and set him at liberty.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor.

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]



as a "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. Though several grounds have been raised in the Habeas Corpus Petition, the main contention of the learned counsel appearing for the petitioner is that the detaining authority has not applied his mind while passing the impugned order of detention. The detenu has not filed any bail application in the ground case. However, the detaining authority, at paragraph - 6 of the grounds of detention, relying upon a bail order granted to one Sakthi alias Sakthivel in a similar case, has arrived at subjective satisfaction that there is real possibility of the detenu in coming out on bail in the ground case, which according to the learned counsel for the petitioner, shows non application of mind on the part of the detaining authority and the same vitiates the order of detention. In support of his contention, the learned counsel for the petitioner has placed reliance upon the order passed by this Court in HCP No.134 of 2013 dated 17.04.2013, wherein it is stated as follows:

"5. Even though the detaining authority has stated in paragraph No.5 of the grounds of detention, that in a similar case registered at CS CID, Cuddalore Unit Crime No.732/2011, under Section 6(4) of T.N.S.C (RDCS) Order 1982 r/w 7(1)(a)(ii) of E.C.Act, 1955 and 294(b), 353 and 307 IPC, one Nazeer @ Nazeer Rahman has been released on bail, by the Court of Principal District and Sessions Judge, Villupuram in Crl.M.P.No.10391 of 2011, by an order dated 21.10.2011, the detaining authority had failed to furnish a copy of the bail application to the detenu. Thus, the non supply of the relevant document would vitiate the order of detention, dated 31.12.2012. Further, it is clear that the detenu did not have sufficient opportunity to make an effective representation, against the impugned order of detention, as he had not been furnished with the relevant document. In these circumstances, we are of the view that it would not be appropriate for the detaining authority to state there is a likelihood of the detenu coming out on bail, in the ground case, since bails are granted by the Courts, in such cases. Hence, we are of the considered view that the detaining authority had passed the impugned order of detention dated 31.12.2012, without proper application of mind.

6. In such circumstances, the impugned detention order passed by the second respondent dated 31.12.2012 is set aside and this Habeas Corpus Petition is consequently, the detenu is directed to be set at liberty, forthwith, unless his detention is required in connection with any other case or cause."



3. In the light of the same, this Habeas Corpus Petition is allowed and the Detention Order passed by the second respondent, in M.H.S.Confdl.No.59/2018 dated 26.06.2018 is quashed. The detenu, namely, Sivanperumal son of Aathiyappan, aged about 26 years, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George,
Chennai - 9.
2. The District Collector and District Magistrate,
O/o.the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

MJ

TE/SV/SAR-2 : 23/11/2018 : 3P/6C

H.C.P (MD) No.1040 of 2018
20.09.2018